

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15473 of Irwin P. Edlavitch, Irene O. Rosenthal, and Jerome Golub, pursuant to 11 DCMR 3107.2, for a variance from the use provisions [Paragraph 1702.6(c)] to allow an all-day commuter parking lot in a DD/C-2-C District at premises 1107-1123 10th Street, N.W., (Square 369, Lots 22, 50, 53, 59, 815-819, 851, 852 and 867).

HEARING DATE: April 24, 1991
DECISION DATE: May 1, 1991

ORDER

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of the intersection of 10th and L Streets N.W., and is known as premises 1109-23 10th Street, N.W. It is zoned DD/C-2-C. The property has approximately ninety-five feet of frontage on L Street and 230 feet of frontage on 10th Street.

2. The property has been used for parking purposes subject to Board approval since 1972. The most recent approval of the parking lot was BZA Application No. 14563, dated April 10, 1987, as modified by orders dated August 21 and November 28, 1989. By Order No. 15300, the Board granted variance relief necessary to add premises 1107 10th Street, N.W. to the existing parking lot.

3. The property was formerly zoned SP-2. By Z.C. Order No. 681, dated December 17, 1990, the Zoning Commission adopted the Downtown Development District, Text and Map Amendment. The subject site was rezoned to DD/C-2-C as a result of that Zoning Commission action.

4. The DD/C-2-C District permits a parking lot, parking garage, or parking spaces at or above grade in a building, subject to the following criteria:

1. The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;
2. The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and

3. The parking facility shall require Board of Zoning Adjustment approval pursuant to Sub-section 3107.2 of this title if it provides all-day, commuter parking.

5. The subject site consists of fifteen contiguous lots for a total lot area of approximately 33,400 square feet. The site is bounded by 10th Street to the west, the newly constructed Mt. Vernon Square Plaza apartment house to the north, public alleys to the east, and L Street to the south.

6. The site is located in the Mt. Vernon Square area, approximately one block north of the northernmost boundary of the Central Business District. The surrounding area is generally characterized by residential development, including row dwellings and apartment houses to the north, neighborhood commercial uses along 9th Street, office development to the west, and high density office and retail use to the south in the Central Business District. The Mt. Vernon Square Metrorail Station is located approximately two blocks east of the subject site.

7. The applicant is seeking a variance from the use provisions in order to continue to operate a parking lot on the subject site which is not devoted to short-term or residential parking.

8. The applicant testified that the ownership of the site is divided between Irene Rosenthal, who owns approximately 60 percent; Jerome Golub, who owns approximately 23 percent; and Irwin Edlavitch, who owns approximately 17 percent of the site. The owners have been working jointly to assemble a large enough site to be attractive for sale or development. The site has been on the market for several years but, due to existing economic conditions, no buyers have bid on the property and financing for new construction on the site is not likely to become available in the near future.

9. Existing uses in the immediate area of the subject site do not generate a demand for short-term parking or residential parking. The majority of nearby neighborhood commercial uses provide their own parking or the demand for short-term parking generated by those uses is accommodated on the street. The only new residential development in the area, Mt. Vernon Square Plaza, provides on-site parking.

10. The operator of the lot testified that the lot operates as an attended lot from 7:00 a.m. to 6:30 p.m., Monday through Friday. The lot contains approximately 130 parking spaces and is cleaned on a daily basis. The operator of the lot testified that approximately 90 percent of the persons using the lot during the weekdays are commuters who then walk or take public transportation

to offices located in the Central Business District. The lot is available for use by area residents during hours it is not in operation.

11. The operator testified that the charge for parking on the subject lot is \$3.75 per day. The operator further testified that even with the minimum parking rate charged at the subject site, the vacancy rate on the lot is approximately 15 percent. The applicants testified that the total annual income from the lot is not sufficient to cover the annual taxes and operating expenses on the lot and that if commuter parking were disallowed the lot would become vacant and completely unproductive for years until assembly, financing and development of the site became a viable option.

12. The operator testified that all conditions of the Board's prior orders have been met. The operator further testified that the applicants have attempted to address concerns expressed by the ANC relative to the lot. The operator noted that no complaints regarding the day-to-day operation of the lot have been received.

13. The Office of Planning (OP), by memorandum dated April 23, 1991, recommended that the application be approved. The OP was of the opinion that the use of the site for all-day commuter parking would not be of a long-term nature because of projected residential and commercial development in the area as a result of the opening of the Mt. Vernon Square Metrorail Station. The OP was further of the opinion that the effect of the recent rezoning of the site on a use which has existed on the site for three decades results in a peculiar and exceptional condition of the property and that the loss of such use would create an undue hardship on the owners.

14. The Department of Public Works (DPW), by memorandum dated March 18, 1991, indicated that the use has a negligible impact on the local transportation system and, therefore, offers no objection to its continuance. The DPW noted that while the lot is generally well-maintained, lighted and striped, portions of the lot are in need of repair. The DPW also recommended that the applicants provide landscaping along the 10th and L Street frontages to complement existing landscaping.

15. The D.C. Metropolitan Police Department (MPD), by letter dated February 25, 1991, offered no opposition to the application. The MPD was of the opinion that the use would not affect the public safety in the immediate area or generate an increase in the level of police services now being provided.

16. The D.C. Fire Chief, by memorandum dated April 4, 1991, offered no objection to the application. An evaluation of the proposed use led the Fire Chief to determine that it would have no impact on emergency operations.

17. Advisory Neighborhood Commission (ANC) 2C, by letter dated April 4, 1991, recommended denial of the application until the applicants remove the pay telephone from the premises and replace the pole lights at the perimeter of the site. The ANC noted that if the applicant complied with the recommendations of the ANC, it would recommend approval for two years.

18. By letter dated April 17, 1991, the Single Member District Commissioner (SMD) for ANC 2C-08 indicated that crime-related security and cleanliness were the issues most often raised with respect to renewal of parking use on the subject site. The SMD Commissioner noted that the applicants have improved the condition of the facility and have had the pay telephone removed. The SMD Commissioner further noted that the applicants have agreed to leave the lights on all night for a trial period to see if the lighting would have an impact on crime in the area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, which requires a showing of undue hardship upon the owner arising out of some condition of the property itself. The Board concludes that the applicant has met the requisite burden of proof. The property has been used primarily for commuter parking for over thirty years, with appropriate special exception and use variance relief granted by the Board under the criteria set forth in the previous special exception zoning provisions applicable to the site. The site has subsequently been rezoned. There has been no significant change in the development of the area which would generate sufficient demand for short-term or residential parking to make operation of a parking lot for such uses feasible at this location. In addition, the prevailing economic conditions inhibiting development of the site have not improved to make development of the site economically viable at the present time. The Board concludes that precluding the continued use of the site for all-day commuter parking would result in the inability of the applicants to derive any productive interim use of the property, thereby creating an undue hardship upon the owner.

The Board further concludes that it has accorded the ANC the "great weight" to which it is entitled as evidenced by the conditions hereinafter imposed. The Board further concludes that the requested relief, as hereinafter conditioned, can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan as embodied in the Zoning Regulations and Map. It is therefore ORDERED that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:


1. The applicant shall provide security lighting to the satisfaction of Advisory Neighborhood Commission 2C.
2. The applicant shall make every effort to ensure that no public telephone is placed on or adjacent to the lot.
3. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
4. Wheel stops shall be erected and maintained.
5. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
6. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
7. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
8. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Charles R. Norris to grant; Carrie L. Thornhill not present, not voting).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

MAR 13 1992

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15473Order/bhs

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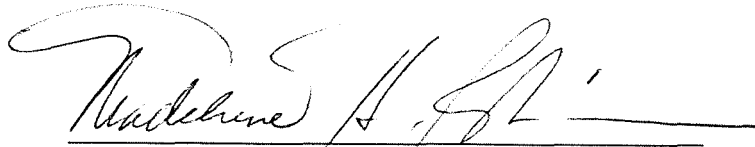
As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAR 13 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Marc Slavin
1828 L Street, N.W.
Washington, D.C. 20036

Jon Golub
1925 N. Lynn Street, #1200
Arlington, Virginia 22209

Irene Rosenthal
14 Sussex Road
Charleston, SC 29407

Alverta Munlyn, Chairperson
Advisory Neighborhood Commission 2-C
1200 S Street, N.W., #201
Washington, D.C. 20009


MADELIENE H. ROBINSON
Acting Director

DATE: MAR 13 1992

15473Att/bhs